

FRIDAY UPDATE – January 27, 2006

*The weekly update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center*

The end of the first half of the legislative session is quickly approaching. Next week is the last week for bills to be passed out of the chamber of origin. Below are reports on bills discussed this week. If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at <http://www.in.gov/apps/lsa/session/billwatch/billinfo>. Past issues of the Friday Update for 2006 are available on-line at <http://www.in.gov/judiciary/center/leg/index.html>.

Benefits

The House Judiciary Committee heard HB 1032, Judges' pensions, authored by Reps. Buell and Kromkowski. This is the bill recommended by the Pension Management Oversight Commission that would allow magistrates to become part of the judges' pension plan and would provide a COLA for 1985 judges' plan similar to the increases for those in PERF. Judge John Baker testified on behalf of the Indiana Judges Association, and began by thanking the committee for the salary adjustments last year. He also talked about the importance of including magistrates in the judges' plan and heralded them as those who do "heavy lifting." He stressed that it was a matter of equity that the COLA needed to be included in the 1985 plan, since retired judges under the old plan would now see regular increases and other retired state employees already receive the benefit of the COLA. The bill passed 10-1. Because of the fiscal impact, this bill was recommitted to House Ways and Means Committee and did not have a hearing this week.

Civil Law

The House Judiciary Committee heard HB 1112, Communications of sympathy, authored by Rep. Foley. This bill had been sent to a subcommittee for possible amendment, to address concerns of the committee and practitioners about its effect in medical malpractice and tort cases. There was a discussion on the use of the word apology in the amendment as a possible admission of fault, but with some concerns still lingering, the bill passed the Committee as amended 8-2.

The House Judiciary Committee heard HB 1367, Limited liability for 501(c)(3) organizations, authored by Rep. Thomas. There was much discussion about this concept, particularly after the legislation last year that provided some immunity for volunteers. The committee finally amended the bill by creating a study committee to look at not-for-profit corporations' liability. This amendment passed 11-1.

The House Judiciary Committee heard HB 1306, Various corporate law matters, authored by Rep. Bright. Secretary of State Rokita testified that this was the work of a corporate law survey committee charged with determining what would be good business practices for Indiana. One of its goals was to put "more meat on the LLC skeleton" so that businesses did not have to go to court as much. The committee applauded the work of the Secretary of State, and the bill passed 12-0.

Criminal Law

Senate Corrections, Criminal and Civil Matters met to hear SB 275, which will give the court the same variety of options for revoking a forensic diversion placement as was authorized last session for revocation of probation. Author Sen. Long quickly explained the bill, and Allen Circuit Judge Thomas Felts, Department of Correction Deputy Commissioner Julie Von Arx, and Public Defender Council Executive Director Larry Landis each testified in favor. The bill passed 9-0.

Senate Corrections also heard SB 145 for the forfeiture of auto used by repeat drunk drivers. Author Sen. Mike Young explained that this bill will reduce injuries and death caused by drunk drivers by "taking the weapon away." Sen. Young explained that, under an amendment he was offering, a driver would have his automobile forfeited upon any of four circumstances: (1) the person was caught driving in violation of IC 9-30-5 for the 3rd

FRIDAY UPDATE – January 27, 2006

time; (2) the person had two prior IC 9-30-5 convictions and was driving without insurance; or (3) the person had two prior IC 9-30-5 convictions and was driving with a suspended license. The car also would be subject to forfeiture if it was loaned to the driver by his spouse, or by another individual whom the state proves had knowledge of the prior convictions. On Sen. Bray's objection, operating without insurance was removed as a basis for forfeiture and the driving with two priors in (1) above was amended to require the two priors to have been within the last five years. At Prosecuting Attorneys Council's suggestion, the operating while suspended provision was amended to apply only to persons whose licenses had been suspended within the prior five years. A person whose auto is seized under the bill would also not be eligible to have a vehicle registered in his name with the BMV until the person's license was no longer suspended. The bill passed 9-0.

Senate Corrections heard SB 338, explained by author Sen. Merritt as making it an A misdemeanor to have, produce or distribute a fake government identification, and also providing for a bifurcated sentence enhancement for offenses committed "at the direction of or in affiliation with a criminal gang." The enhancement penalty is a term of years equal to what the defendant is sentenced to for the principal offense. The Marion County Prosecutor testified that the bill is needed to help deter criminal conduct by the newer violent gangs from outside Indiana. The possession of fake identification provision was amended to apply to possession of any "document not issued by a government entity but which purports to have been issued by a government entity." A policeman testified that the forgery offense cannot apply to persons who simply possess, but do not use, fake identification, and this bill would remedy that gap in the statutes. The bill also would allow an expert to testify as to conduct, status and customs which are indicative of criminal gang activity. The bill passed 6-2.

Senate Corrections also heard SB 193, which would allow authorities to destroy hazardous material from methamphetamine labs. Author Sen. Bray offered an amendment which would require the Criminal Justice Institute to collect data on dealing in methamphetamine separately from dealing in cocaine, so as to enable Indiana to obtain more federal grants for methamphetamine suppression projects. The bill also adds sodium chloride to the list of prohibited precursors. CJT's Director Heather Bolerjack spoke in favor of the bill, which passed 7-0.

Senate Corrections heard SB 299, which Sen. Long explained as expanding the trafficking with an inmate offense to include trafficking not just inside penal institutions but also while being transported from a penal institution to someplace else. Police officers testified that inmates being taken to courthouses were picking up cigarettes and other contraband left for them on the courthouse lawn. The Department of Correction testified in favor of the bill, which passed 8-0.

The Senate Judiciary Committee heard SB 83 concerning resisting law enforcement authored by Sen. Lubbers. This bill would impose a minimum nonsuspendible sentence for a person who resists law enforcement and (1) draws or uses a deadly weapon; (2) causes bodily injury to another; or (3) operates a motor vehicle in a manner that creates a substantial risk of bodily injury, caused bodily injury, or death. The minimum nonsuspendible sentence ranges from 30 days to 1 year depending on the person's prior unrelated convictions under this section of the code. These provisions would apply to acts committed after June 30, 2006. The Committee adopted an amendment offered by Sen. Drozda to amend IC 35-41-1-8 regarding the definition of deadly weapon. The Marion County Prosecuting Attorney, in testifying in favor of the legislation, noted that while not usually supporting mandatory minimum sentences it was important to send the message that fleeing from the police has immediate consequences and this would result in deterring crime. Numerous representatives of law enforcement also spoke in favor of the bill. The Public Defenders Council testified before the Committee noting that mandatory minimum sentences do not actually have a deterrent effect and advocated for keeping judicial discretion. The bill passed out of Committee as amended 9-0.

The Senate Judiciary Committee also heard SB 192 concerning bail requirements authored by Sen. Bray. This bill would authorize a split bond process, part cash and part surety, and permit the court to retain all or part of the cash portion for costs, fines, etc. Judge Tom Gray, Morgan Superior Court, testified in favor of this bill and discussed the need for this. A representative of the Bail Agents Association testified that this system would still include bail agents, but noted the desire to have parity in this system by requiring equal amounts for the cash and

FRIDAY UPDATE – January 27, 2006

surety portions of a split bond. The Public Defenders Council had no position on the split bail issue, but discussed the requirement to execute an agreement that allows the court to retain all or part of the cash portion. The Committee discussed this and other issues and made some minor amendments to the language of the bill, which passed as amended 9-0.

The House Courts and Criminal Code Committee considered HB 1128, which would require courts to order use of ignition interlock devices when granting probationary driving privileges in OWI cases. Judge Richard Culver, Hancock Circuit Court, testified in favor of the bill, as well as the Indiana Insurance Institute and the Indiana Attorney General's office. The bill passed 10-0.

The House Courts and Criminal Code Committee considered HB 1281, which would make domestic battery a Class D felony if committed in the presence of a child less than sixteen years of age. The bill was amended during the hearing to create the crime of strangulation, a Class D felony. The Prosecuting Attorneys Council, Marion County Prosecutor, the Indiana chapter of the National Organization of Women, and the Indiana Coalition Against Domestic Violence testified in favor of the bill. The Public Defender Council spoke in opposition to the bill. The bill passed 9-0.

The House Courts and Criminal Code Committee also considered HB 1155, which would require lifetime parole and GPS monitoring for child molesters. During the hearing, the committee amended the bill to make lifetime parole and GPS applicable if the offender was at least 18 years of age at the time the offense was committed. The bill was also amended to prohibit parolees from working at attractions designed primarily to be enjoyed by children younger than 16. The Prosecuting Attorneys Council testified in favor of the amended bill. The Department of Correction spoke generally in favor of the bill, but cautioned that lifetime parole could add approximately \$10 million to the DOC budget by 2010. The bill passed as amended 9-0.

Family & Juvenile Law

The Senate Judiciary Committee heard SB 121 concerning grandparent visitation authored by Sen. Waterman. This bill provides that a grandparent may seek visitation when a parent or guardian unreasonably refuses or restricts visitation with the child. There were four individual grandparents who testified in support and gave detailed accounts of their situations. An attorney testified in opposition to the bill outlining his concerns including constitutional considerations. Sen. Bray, Chair, referred this issue to the Child Support and Custody Study Commission for further review and consideration.

The House Judiciary Committee heard HB 1232, Curfew, authored by Rep. Ayres. He testified that this bill is identical to the bill passed last year by the Committee. He believes this bill addresses the concerns of the court that struck down previous ordinances and statutes, since it provides for a written authorization by the parent of a child out past curfew. He believes it is important for the state to provide direction in this area. The bill passed 11-0.

The House Family, Children, and Human Affairs Committee heard HB 1203 concerning preliminary orders in juvenile cases presented by Rep. Thompson. The bill permits a juvenile court at a detention hearing to impose conditions on a child's parent, guardian, or custodian, if the child is alleged to be in need of services or delinquent. These conditions are to ensure the child's appearance at subsequent proceedings, or the safety of the child, or both, and in the case of alleged delinquents, to ensure the public's physical safety. Various Committee members questioned the necessity of the bill, stating that judges may already inherently have this authority. Others expressed concern that the judges might punish the child by detaining him or her when the parent fails to comply with the conditions. The bill passed out of Committee 7-1.

The House Family, Children, and Human Affairs Committee also heard HB 1415, which permits child services caseworkers to carry a nonlethal device when working on a department investigation, such as mace, pepper spray, or a stun-gun. Rep. Mays presented the bill, because the Department of Child Services has an informal policy prohibiting nonviolent weapons. The Committee unanimously amended the bill to remove stun-

FRIDAY UPDATE – January 27, 2006

guns from the list of permissible nonlethal devices. Although the Committee was not in full agreement as to the exact terms of the bill, they passed it out of committee 6-2 in the hope that it would “bring the Department to the table” to discuss the protection of caseworkers.

Judicial Administration

The House Rules and Legislative Procedures Committee heard HB 1419, Judicial nominations, authored by Rep. Foley. This bill would change the way judicial nominating commission members are elected to the commission, by allowing only the Speaker of the House and the Senate President Pro Tempore to nominate the attorney representatives on the commission. The attorneys throughout the state would vote by district for one of those nominees. In addition, the commission would have the authority to make a recommendation concerning the approval or rejection of an appellate justice or judge for retention. Should the commission make such a recommendation, that recommendation would then appear on the ballot. Rep. Foley testified that this bill is in response to his concerns that the current system for appointing and retaining appellate justices and judges is not working. He feels that the disparity in political party of the appellate bench is proof that politics are still in the process. He also believes that there is a true disconnect between voters and those on the retention ballot. The Insurance Institute and the Indiana Manufacturers Association testified in favor of reform, and thought this might be a way to get some legislative input into the selection process. However, there was significant criticism of this approach as numerous individuals pointed out the flaws in the legislation. Rep. Ulmer was the first to testify against the bill because he sees this approach as making the selection process even more political.

A member of the current commission testified in opposition, as did Judge Sharpnack, Indiana Court of Appeals, who pointed out that there was no objective criteria for the commission to use in determining a recommendation on retention. The Indianapolis Bar Association, the Indiana State Bar Association, the Defense Trial Counsel of Indiana, and the Indiana Judges Association, represented by Judge Stanley Levine all strongly testified in opposition to the bill. Despite the strong opposition, the bill passed along party lines by a vote of 6-4. However, the Indianapolis Star reported on Wednesday that House Speaker Bosma has quashed the proposal, saying that any change needs to be well-thought-out, and this was not an issue that they could spend a lot of time on during the rest of the session.

The Senate Judiciary Committee heard SB 232, concerning jury service exemptions authored by Sen. Gard. This bill would eliminate automatic exemptions for jury service, protect a person who is called for jury service from adverse employment action, and prohibit employers from requiring employees to use vacation or sick leave for jury service. Sen. Gard reminded the Committee of the hearings in 2004 on the issue of exemptions, noting that she had worked with Judge William Hughes, Hamilton Superior Court, Chair of the Jury Committee, and the dentists on an amendment to address the dentists' concerns regarding scheduling jury service. The amendment, which was adopted by the Committee, outlines the deferral process for jurors and is consistent with the Jury Rules and advice already provided to judges by the Jury Committee.

Mag. Louis Rosenberg, on behalf of the Jury Committee, testified in favor of the elimination of exemptions and the proposed amendment. Sen. Lanane raised a concern with eliminating the exemption for those over 65. Mag. Rosenberg gave a brief discussion on the ability of the court to review the jurors qualifications. Sen. Bray indicated that judges have discretion to excuse jurors. Sen. Gard said that she would be willing to work on this issue on second reading. Sen. Bray discussed that caselaw holds that juries should be made up of the broadest pool possible. The Indiana Dental Association was not signed up to testify on the bill, but Sen. Zakas raised the issue of practice requirements for dentists versus other professions. Doug Bush and Ed Popcheff, both representing the dentists, explained their position in the past and that they worked on the amendment with Sen. Gard and that the amendment would help their concerns. Mr. Popcheff did discuss the fact that Marion County allows for a date specific deferral and also reported that he has heard of a situation involving the spouse of a dentist who was denied a deferral. He said that deferral process was not operating in a uniform manner across the state. He thought the amendment outlining the deferral process helps all citizens and will help make the system more friendly. The bill passed as amended 8-1.

FRIDAY UPDATE – January 27, 2006

The House Ways and Means Committee heard HB 1156 concerning various court matters and HB 1157 concerning Marion superior court. These bills were previously reported in the first installment of the Friday Update.

The provisions from HB 1157 were amended into HB1156. The Committee also amended HB 1156 to include an increase in court fees by \$1.00 in criminal, civil, juvenile, probate, small claims, infraction and ordinance violations. This amendment also increases by \$1.00 the initial and monthly user fees in pre-trial diversion and deferral cases. The bill as amended passed out of Committee 16-3.

Miscellaneous

The Senate Judiciary Committee heard SB 143, concerning explanation of proposed constitutional amendments. This bill was discussed in Committee last week and was brought again this week to consider the amendment proposed during that discussion. The Committee adopted an amendment that would have the explanation prepared by Legislative Services instead of the Attorney General. The bill as amended passed 8-0.

Small Claims

The Senate Governmental Affairs and Interstate Cooperation Committee heard SB 1 concerning Marion County government matters. This bill was previously reported in the first installment of the Friday Update reporting on provisions of the bill affecting Marion County small claims courts. This week the author, Sen. Mike Young, offered an amendment to remove the provisions of the bill concerning the Marion County small claims courts, citing a desire to avoid a recommitment of the bill to Senate Appropriations. The Committee accepted the amendment by consent.

The House Judiciary Committee heard HB 1158, Small claims and civil actions, authored by Rep. Richardson. Originally, this bill was drafted to clarify whether or not to consider garnishee defendants as “defendants” for purposes of collecting the \$10.00 fee for each additional defendant. Rep. Richardson asked for an A.G.’s opinion on this, which opined that they were not included in that class of defendants. The clerks are split on whether to charge this fee, because those who charge say that it has decreased the number of proposed garnishee defendants and they can cover their costs, while other clerks don’t want the hassle of keeping track. Rep. Ulmer proposed a compromise, which might be considered on 2nd reading, by suggesting that there could be up to 3 garnishee defendants, and any additional ones would be charged \$10.00 a piece. The bill also was amended to raise the price for sheriffs’ personal service of process. This would be a new \$13.00 fee. There was much concern about charging this fee in small claims cases, so there might be an additional 2nd reading amendment. The bill passed as amended 11-0.